

## **Advisory Opinion 2000-6**

### **MONTGOMERY COUNTY ETHICS COMMISSION**

#### **ADVISORY OPINION**

A former employee of the Montgomery County Police Department has asked the Ethics Commission to “approve” his employment by a Company that has a contract with the County. Treating the request as a request for an advisory opinion,<sup>1</sup> the Commission advises that the Montgomery County Ethics Law does not prohibit the former employee from accepting the proposed employment.

This advice is expressly founded on the following statement of pertinent facts provided by the employee, and is contingent upon that being a full and complete statement of all material facts. If there are any additional material facts, the requester may not rely on this advisory opinion, and he should disclose, in writing, the additional material facts and request a supplemental advisory opinion.

#### **Material Facts**

Based on the requester’s letter to the Commission and the requester’s telephone conversations with Commission staff and legal counsel, the Commission understands that the requester has provided the following material facts:

The requester recently resigned from the Montgomery County Police Department after 10 years of exemplary service.

While employed as a Detective, the requester used software developed by the Company.

The County acquired the right to use the software by bridging a standard purchase contract between the company and the Park Police.

The requester had no involvement in the procurement of the software or the administration of the contract

The requester’s only involvement with this matter was “to request funds from the Montgomery County Police Department’s Management and Budget Office in order to purchase the needed software licenses, and the use the software once the license was acquired.”

In addition, the Company and Montgomery County currently are negotiating for the Company to provide a mobile data interface for their pending mobile data project.

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<sup>1</sup> The Commission is not authorized to “approve” after-county employment. However, the Montgomery County Ethics Law authorizes any person subject to the Ethics Law to ask the Commission for an advisory opinion on the meaning or application of the Ethics Law to person. MONT. CO. CODE §19A-7. Because the Ethics Law restricts the employment of former county employees under certain circumstances, the requester is a person subject to the Ethics Law, and, therefore, is entitled to an advisory opinion on the question of his proposed employment.

The requester was unaware of those negotiations until after he had been offered and accepted the position with the Company.

The proposed employment is in a position managing the post sale implementation of mobile data systems at police agencies in the Massachusetts region.

The requester will be living and working in the northeastern region of the Country, and will have “nothing to do with Montgomery County’s mobile data implementation” or, for that matter, any other matter between the Company and Montgomery County.

### **Applicable Law**

The Montgomery County Ethics Law restricts the employment of former county employees as follows:

- (a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.
- (b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:
  - (1) significantly participated in regulating the person or business; or
  - (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).
- (c) Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.<sup>2</sup>

In addition, the Ethics Law prohibits a former Montgomery County employee from disclosing confidential information relating to or maintained by a County agency that is not available to the public, and from using confidential information for personal gain or the gain of another.<sup>3</sup>

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<sup>2</sup> MONT. CO. CODE, §19A-13. However, after receiving a written request, the Commission may grant a waiver of the prohibitions of subsection 19A-13 it finds that (1) the waiver is needed to ensure that competent services to the County are timely and available; (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or (3) the proposed employment is not likely to create an actual conflict of interest. MONT. CO. CODE, §19A-8(b).

<sup>3</sup> MONT. CO. CODE §19A-15(a).

### **Analysis & Conclusion**

As the Commission understands the material facts, the requester never significantly participated in or had any official responsibility for the contract or negotiation with the Company, and the Company was not and is not regulated by the Montgomery County Police Department in any manner. Therefore, the Ethics Law does not prohibit the requester from accepting employment with the Company. However, in accordance with usual practice, the Commission cautions the requester regarding the Ethics Law's prohibition on the use of confidential county information.

[signed]

Walter A. Scheiber, Chairman

December 15, 2000